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# Supreme Court of the United States

October Term, 1948.

No. 250.

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FRANK C. PABST AND  
HELEN R. PABST, HIS WIFE,        -        -        *Petitioners,*

*v.*

JOHN P. DANT DISTILLERY COMPANY,  
INC.,        -        -        -        -        -        *Respondent.*

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*On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Sixth Circuit.*

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## BRIEF FOR RESPONDENT IN OPPOSITION.

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### JUDGMENTS BELOW.

The findings of fact and conclusions of law of the United States District Court for the Western District of Kentucky (R. 108-118) are reported in 72 F. Supp. 619, and pursuant thereto that Court entered judgment (R. 118-125) for the respondent. The judgment of the United States Court of Appeals for the Sixth Circuit (R. 181) affirmed the judgment of the District Court.

### **JURISDICTION.**

The judgment of the Court of Appeals was entered on June 2, 1948. The petition for a writ of certiorari was filed in this Court on August 30, 1948. Jurisdiction of this Court is invoked under Section 240 of the Judicial code of the United States, as amended (28 U. S. C., §347).

### **STATEMENT.**

The respondent, John P. Dant Distillery Company, Incorporated (hereinafter called "Dant"), instituted this action against the petitioners, Frank C. Pabst and Helen R. Pabst, his wife (hereinafter referred to in the singular as "Pabst"), to secure specific performance of an agreement to sell, at a price fixed by appraisers, an undivided one-half interest in a jointly owned warehouse and certain distillery equipment.

The issue as to whether the appraisers by their award fixed the value of the property in accordance with the terms of the arbitration agreement was tried before the District Judge. He found from the language of the award and from the evidence, that the appraisers fixed \$38,246.50 as the sale price in conformity with the terms of the arbitration agreement (R. 115), and entered a judgment (R. 118) requiring Pabst to convey to Dant the property involved in this action, for the sum of \$38,246.50 in compliance with the award under the arbitration agreement.

Pabst prosecuted an appeal to the United States Court of Appeals for the Sixth Circuit and that Court entered a judgment (R. 181) which reads as follows:

“The above case having come on to be heard upon the transcript of the record, the briefs of counsel, and arguments in open court; and it appearing that appellee and appellants are jointly the owners of certain land and a warehouse situated thereon; that appellee is in possession under a lease which gave it the right to purchase the property at its fair market value; that the parties entered into an agreement that the fair market value of such property was to be fixed by appraisers designated by the parties; *that the appraisers made their report and fixed the value for the property to be purchased by appellee and sold by appellants*; that appellants refused to sell on the ground that the appraisers had not, in fact, determined the fair market value of the property; *and it appearing that the district court found, as a fact, that the appraisers had determined and reported the fair market value*, and entered conclusions of law that appellee was entitled to a conveyance of the property and that appellants had no right to receive rent after tender of the consideration or offer by appellee to pay the value of the property as fixed by the appraisers; and the district court having entered a judgment in favor of appellee, in conformity with such findings and conclusions; and it appearing that the findings of fact of the district court are sustained by the evidence and there is no error in its conclusions of law.

"Now, therefore, it is hereby ordered, adjudged, and decreed that the judgment of the district court be and is hereby affirmed."

(Emphasis added.)

Pabst applies for certiorari on the ground that the Court of Appeals has so far sanctioned a departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

### **SUMMARY OF ARGUMENT.**

1. The decisions below are correct and there is no occasion for further review.
2. This is not a case for review by certiorari under Rule 38, §5(b), of the Rules of this Court.

### **ARGUMENT.**

#### **I.**

#### **The Decisions Below Are Correct.**

Counsel for Pabst contend that the Court of Appeals erred in deciding "that the findings of fact of the District Court are sustained by the evidence and there is no error in its conclusions of law." Counsel seem to urge that neither the District Court nor the Court of Appeals found from the evidence that the appraisers made an award, but in this they are in error. As pointed out above, both courts expressly found that an award had been made under the terms of the arbitration agreement.

The finding of fact, that the appraisers by their award fixed \$38,246.50 as the sale price in conformity with the terms of the agreement, is supported by the language of the award, and by the only clear and convincing testimony as to what was intended by the language of the award. The conclusion that Dant was entitled to a conveyance of the property, follows as a matter of course from the findings of fact, since no question has been raised as to the validity of Pabst's agreement to sell at a price fixed by the appraisers.

We submit that the finding of fact is correct and there is no occasion for further review.

## II.

### **This Is Not a Proper Case for Certiorari.**

While there is no error of fact or law in the decisions of either court below, even if there were such error, it is apparent from the petition for a writ of certiorari that the questions presented relate to a particular contract and turn upon the facts of this case, and there is no controversy of importance with respect to legal principles. In short the petitioners ask this Court to review only a question of fact found by the District Court and affirmed by the Court of Appeals.

In *Magnum Import Co. v. Coty*, 262 U. S. 159, 67 L. Ed. 922, 43 S. Ct. 531, the Court said:

“The jurisdiction to bring up cases by certiorari from the circuit court of appeals was given for two purposes: first, to secure uniformity of decision between those courts in the nine circuits;

and, second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the circuit court of appeals another hearing. Our experience shows that 80 per cent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ."

Clearly this case does not involve "questions of importance which it is in the public interest to have decided by this Court of last resort," and the question presented is not one of those enumerated in Rule 38, Paragraph 5(b) of the Rules of this Court.

As said in 48 Harvard Law Review 238, 274:

"To scores of petitioners each year any asserted error in the decision of a case, however minute and of whatever character, is such a departure 'from the accepted and usual course of judicial proceedings' as to call for an exercise of the Supreme Court's power of supervision. Of course, the reason refers neither to errors of law nor to minor departures from customary practice. It refers to matters of major concern to the integrity of the judicial process."

It is obvious that the petition in this case does not present any question of major concern to the integrity of the judicial process.

Therefore this is not a proper case for the issuance of a writ of certiorari.



**CONCLUSION.**

The petition should be denied.

Respectfully submitted,

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